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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/058,520	01/28/2002	John Keeney Howie	8410M	5398
27752	7590	07/07/2003		S
THE PROCTER & GAMBLE COMPANY INTELLECTUAL PROPERTY DIVISION WINTON HILL TECHNICAL CENTER - BOX 161 6110 CENTER HILL AVENUE CINCINNATI, OH 45224			EXAMINER	
			ACQUAH, SAMUEL A	
			ART UNIT	PAPER NUMBER
			1711	>

DATE MAILED: 07/07/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>
	10/058,520	HOWIE ET AL.
	<b>Examiner</b>	<b>Art Unit</b>
	SAMUEL A. ACQUAH	1711

-- The MAILING DATE of this communication appears on the cover sheet with the corresponding address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) Responsive to communication(s) filed on 09 May 2003.
- 2a) This action is FINAL.                    2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) Claim(s) 1-28 is/are pending in the application.
  - 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 1-28 is/are rejected.
- 7) Claim(s) \_\_\_\_\_ is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) The proposed drawing correction filed on \_\_\_\_\_ is: a) approved b) disapproved by the Examiner.  
 If approved, corrected drawings are required in reply to this Office action.
- 12) The oath or declaration is objected to by the Examiner.

**Priority under 35 U.S.C. §§ 119 and 120**

- 13) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
  - a) All b) Some \* c) None of:
    1. Certified copies of the priority documents have been received.
    2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
    3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.
- 14) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
  - a) The translation of the foreign language provisional application has been received.
- 15) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

**Attachment(s)**

- |  |  |
|--|--|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                               | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). _____ . |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)           | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)  |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ . | 6) <input type="checkbox"/> Other: _____ .                                   |

### DETAILED ACTION

1. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.
2. Applicant's arguments filed 05/09/03 have been fully considered but they are not persuasive. See the following explanations.
3. Claims 1-28 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Rizzi et al '699; Kenneally '226; and Volpenhein '360.

All the cited prior arts are of record in the previous communication. Applicants traverse the rejections on the basis that:

**Specifically, none of the cited references teach a process a process for making a polyol fatty acid polyester wherein the polyol and fatty acid esters are heated at a temperature and pressure sufficient to maintain a substantially constant reflux rate...this is an important feature of the present invention.**

It is the Examiner's position that Applicants' argument is not convincing, and in this regard Applicants' attention is directed to Rizzi et al '699, column 2, line 26 et seq. wherein Patentees clearly disclose that the reaction comprising (i) polyol, (ii) fatty acid lower alkyl ester, (iii) alkali metal fatty acid soap, and (iv) basic catalyst, is heated at a temperature from about 110 °C to about 180 °C under a pressure of from about 0.1mm Hg to about 760mm Hg for a time sufficient to form a homogeneous melt of partially esterified polyol and unreacted starting materials. According to the specification and claims (see claims 10, 13, and 14, for example) the reaction mixture is heated at a temperature of 115-150 °C and a pressure from about 60 to about 190 mm Hg in order to maintain a constant reflux. However, as indicated above, the prior art clearly

discloses these reaction conditions, thus even though the prior art does not specifically mention "constant reflux", this feature would have been inherent in the prior art process because of the reaction conditions. See also column 9, line 40 et seq. of the Kenneally '226; and column 2, line 43 et seq. of the Volpenhein '360. It is the Examiner's position that the cited prior arts have features and characteristics as claimed.

**4. THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

**5.** Any inquiry concerning this communication or earlier communications from the examiner should be directed to SAMUEL A. ACQUAH whose telephone number is 703-308-2436. The examiner can normally be reached on M-TH, FRIDAYS OFF.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, JAMES SEIDLECK can be reached on 703-308-2462. The fax phone numbers for the organization where this application or proceeding is assigned are 703-

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305-7718 for regular communications and 703-872-9311 for After Final  
communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-305-0661.

S.A.A.  
July 3, 2003

*SAquah*  
SAMUEL A. ACQUAH  
PRIMARY EXAMINER  
GROUP 1000 /700